IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

ITA No. 85 of 2006

Date of Decision: 24.09.2007

The Commissioner of Income Tax, Panchkula

…Appellant

Versus

M/s Haryana State Electricity Board, Panchkula

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Yogesh Putney, Advocate,
for the appellant-revenue.

Mr. B.S. Rana, Advocate,
for the respondent-assessee.

M.M. KUMAR, J.

The revenue has approached this Court by filing instant appeal under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act') challenging order dated 20.6.2005, passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (for brevity, 'the Tribunal'), in I.T.A. No. 374/Chandi/2001, in respect of assessment year 1997-98. The revenue has claimed that the following question of law would arise for our determination:-

> "Whether on the facts and in the circumstances of the case the ITAT was right in law to uphold that adjustment on account of brought forward business losses or

unabsorbed depreciation, whichever is less, pertaining to an exempt category of income as mentioned in Explanation (iv) to Section 115JA(2) of the Act, was allowable to the assessee from the income assessed under the head 'income from other sources'?

Brief facts of the case are that the assessee is a statutory Board and derived its income mainly from generation and distribution of power all over the State of Haryana. The assessee filed its return of income declaring loss of Rs. 14,11,55,71,045/- on 27.11.1997. In the computation of income, net taxable profit was shown and after reducing therefrom the brought forwarded losses and unabsorbed depreciation, loss was shown to be carried forward at Rs. 14,11,55,71,045/-. The return was processed under Section 143(1)(a) of the Act on 30.3.1998. Subsequently, the case was selected for scrutiny.

The Assessing Officer made certain additions on account of disallowance but the net result even after additions remained the same and the income of the assessee was calculated at Rs. nil.

The income of the assessee was computed being a Company under the Act, which was less than 30% of its book profits. In view of provisions of Section 115JA of the Act, the assessee was chargeable to tax @ 30% of book profit. Accordingly, the Assessing Officer computed its income by applying the provisions of Section 115JA of the Act. The Assessing Officer also noticed that apart from the income of the main activity of generation and distribution of

electricity, the assessee Company had also shown income of Rs. 96,00,00,812/- as its income from other sources, which included a sum of Rs. 73,74,80,869/- received from the consumers on account of surcharge levied on electricity bills. The Assessing Officer also noticed from the audit reports that an amount of Rs. 69,26,953/- had accrued to the assessee as interest on the investment which was not credited as profit and loss account. The Assessing Officer exempted an amount of Rs. 73,74,80,869/- being relatable to generation and distribution of electricity and calculated the income from other sources at Rs. 22,94,46,869/-. The Assessing Officer also determined income under Section 115JA of the Act at Rs. 6,88,34,068/- being 30% of the amount of Rs. 22,94,46,869/-. The assessment was completed under Section 143(3) of the Act on 18.2.2000 (A-1).

The assessee filed an appeal before the Commissioner of Income Tax (Appeals). CIT (A) in para 7 of her order opined that the case of the assessee fell within the scope of Section 115JA(2)iii & iv, namely, that benefit for brought forward losses and depreciation has to be allowed and profit from business of generation and distribution of power has to be reduced. Accordingly, the CIT (A) directed the Assessing Officer to give effect to these two items and re-compute the income under Section 115JA after giving effect to brought forward lossess/depreciation and reducing profit from generation and distribution of electricity/power (A-2).

On further appeal of the revenue filed before the Tribunal, the view taken by the CIT (A) has been upheld holding that

the CIT (A) had rightly directed to the Assessing Officer to compute the profit and gain of the business under Section 115JA of the Act (A-3). The view of the Tribunal is discernible from para 7 of its order, which reads as under:-

> "7. In this case, the Assessing Officer had computed the profits under section 115JA. The income from other sources earned from generation and distribution of power was segregated by the Assessing Officer. The brought forward losses were adjusted against the business profits and income from other sources was taxed separately. The Commissioner of Income-tax (Appeals) held that as per provisions of Section 115JA, the profits from business of generation and distribution of power are to be determined as per the books of account of the assessee and as per clause (vi) to Explanation to proviso (2) to Section 115JA(1) & (2). It has further been held that the statutory adjustments are to be made to the profit shown in the Profit & Loss Account and the book profit is to be arrived at after making the adjustments as prescribed. It has been pointed out by the Commissioner of Income-tax (Appeals) that the assessee is engaged in the business of generation and distribution of power. The Board is earning income from its business of generation and distribution of power and as per clause (vi) to Explanation to proviso (2) to Section 115JA, profit from Business of Generation and distribution of

> Power is to be excluded from the Book Profit and while applying provisions of section 115JA the amount of loss brought forward or unabsorbed depreciation, whichever is lower as per books of account to be adjusted. The Commissioner of Income-tax (Appeals) has held that provisions (2)(3) & (4) of Section 115JA apply in this case and the Assessing Officer has been directed to recomputed the income in accordance with law and the provisions of the Act stated above."

After hearing learned counsel for the parties and perusing the orders of the Assessing Officer, CIT (A) and that of the Tribunal, we are of the considered view that the provisions are explicit in their contents and meaning. In the face of clear provision no principles of interpretation or external aid would be necessary. The provision with its plain language would be fully applicable, relevant extract of which reads as under:-

> "115JA. (1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 (hereafter in this section referred to as the relevant previous year) is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year

shall be deemed to be an amount equal to thirty per cent of such book profit.

(2) Every assessee, being a company, shall, for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956):

Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):

xxx xxx xxx xxx xxx

xxx xxx xxx xxx

Explanation.- For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section 92), as increased by-

(a) the amount of income-tax paid or payable, and the provision therefore; or

(b) the amounts carried to any reserves by whatever name called; or

(c) the amount or amounts set aside to provisions made for meeting liabilities; other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed; or

(f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies;

if any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduced by,-

xxx xxx xxx xxx xxx

xxx xxx xxx xxx

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.- For the purposes of this clause, the loss shall not include depreciation; or

(iv) the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power; or

xxx xxx xxx xxx xxx

xxx xxx xxx xxx

(vi) the amount of profits derived by an industrial undertaking from the business of developing, maintaining and operating any infrastructure facility as defined under sub-section (12) of section 80-IA, and subject to fulfilling the conditions laid down in sub-section (4A) of section 80-IA; or

xxx xxx xxx xxx xxx

xxx xxx xxx xxx"

It is evident from the perusal of the aforementioned provisions that specific procedure for calculation of book profit and application of minimum alternate tax has been laid down. The provision does not leave any room for deviation from the statutory procedure prescribed by Section 115JA of the Act. Sub-section (1) provides that it applies to company and if its normal taxable income is less than 30% of the book profits then it shall be deemed to be total income. Likewise, sub-section (2) lays down that every company is under obligation to compile its accounts in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956. It also defines book profits and lays down the manner of computation. In that regard we are of the view that the CIT (A) has adopted correct approach when she has observed in her order as under:-

> "……the book profit appearing in the Profit & Loss Account computed as per provisions of the Companies Act is the starting point for calculating the profit of MAT. This point is subjected to number of adjustments. The adjustments made are enumerated in the law itself and there is no question or occasion of allowing or not allowing any adjustment. The adjustments available to the assessee at the time of calculating profit under section 115JA are: **1) profit from business of generation and distribution of power clause vi to explanation to proviso 2 to section 115JA(1) and (2) the amount of loss brought forward or unabsorbed depreciation, which ever is lower as per books of accounts clause iii to explanation to proviso 2 to section 115JA(1)**. The statutory adjustments are to be made to the profit shown in the profit and loss account and the book profit is to be arrived at after making the adjustments as prescribed."

The aforementioned provisions have been correctly applied to the facts of the present case. The Assessing Officer has failed to take into consideration two major factors, namely, (a) the statutory adjustments were required to be made to the profit shown in the profit and loss account; and (b) the book profit is to be arrived at after making adjustment as prescribed. The assessee earns income from its business of generation and distribution of electricity/power.

According to the provisions of clause (vi) to explanation appended to proviso to Section 115JA(1) & (2) of the Act, profit from business of generation and distribution of power is to be excluded from the book profit and the amount of loss brought forward or unobserved depreciation whichever is lower as per books of account, as has been provided by clause (iii) to explanation to proviso to Section 115JA(1) & (2) of the Act. It is, thus, evident that the case of the appellant is covered by clauses (iii) & (iv) of explanation appended to Section 115JA. There is no legal infirmity in the view expressed by the Tribunal, which has accepted the order passed by the CIT (A). We find that no question of law much less a substantial question of law would arise for determination of this Court on the plain and self-explanatory language of Section 115JA of the Act. The appeal does not merit admission and consequently the same is dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 24, 2007

Pkapoor

FIT FOR INDEXING